SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940

No. 1043

JULIAN RILEY AND HUGHES SPALDING, EXECUTORS OF THE ESTATE OF JULIA M. HUNGERFORD, DECEASED,

Petitioners,

vs.

THE NEW YORK TRUST COMPANY, ADMINISTRATOR C. T. A. OF THE ESTATE OF JULIA M. HUNGERFORD, DECEASED, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE.

REPLY BRIEF OF PETITIONERS FOR CERTIORARI.

DAN MACDOUGALD,
JAMES A. BRANCH,
ROBERT S. SAMS,
AARON FINGER,
Counsel for petitioners.

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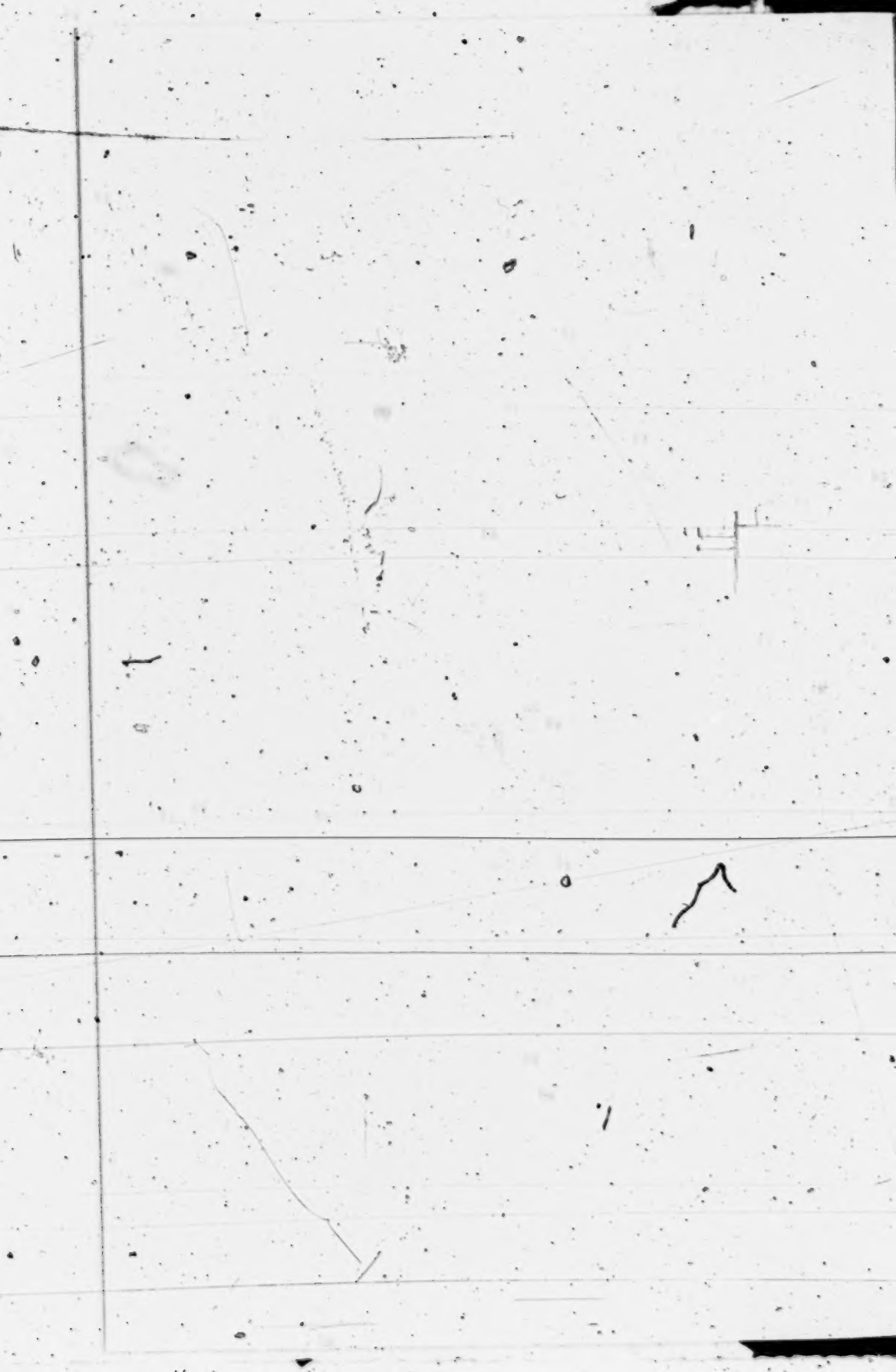

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Petitioners,

vs.

THE NEW YORK TRUST COMPANY, ADMINISTRATOR C. T. A. OF THE ESTATE OF JULIA M. HUNGERFORD, DECEASED,

and

COCA-COLA INTERNATIONAL CORPORATION,

and

THE NEW YORK TRUST COMPANY, TEMPORARY ADMINISTRATOR OF THE ESTATE OF JULIA M. HUNGERFORD, DECEASED.

REPLY BRIEF OF PETITIONERS FOR CERTIORARI.

In view of certain statements made by counsel for the Administrator in their brief in opposition to the petition for certiorari, we wish to file a short reply.

It is essential in considering the question presented to keep in mind the fact that the only issue before the Dela-

ware court was the succession to the title of the shares of stock owned by decedent. No claims for estate or inheritance taxes or any rights of any creditors were before the court. It is not a bill to marshal the assets of the estate to pay the creditors or to distribute the same.

I.

Counsel for the Administrator, on page 3 of their brief, assert that a judgment against the heirs or distributees is not *res adjudicata* as to the personal representative, and in a footnote numerous cases are cited, among which is the case of *Buchan* v. *Williamson*, 142 Ga. 198, 82 S. E. 548. This statement is misleading if it is intended to convey the idea that such is the rule where the succession only is involved or where a right is being asserted solely on behalf of the distributee which has been previously determined against such distributee or to controvert the rule that identity of parties is a matter of substance and not of form.

Chicago, Rock Island & Pacific Rwy. Co. v. *Schendel*, 270 U. S. 611.

(See page 16 of our main brief.)

It is doubly misleading if it is intended by the citation of the case of *Buchan* v. *Williamson* to create the idea that the Supreme Court of Georgia has ever so held. On the contrary, that court, in the case of *Thomas* v. *Morrisett*, 76 Ga. 384, held exactly the opposite. In that case, cited in our brief in support of the petition for writ of certiorari, the succession was determined by probate proceedings in Alabama in which all of the distributees were before the court. The domicile of the decedent was determined to be in Alabama. While that judgment was being appealed by certain of the heirs to the Supreme Court of Alabama, these heirs, residents of Georgia, instituted *ex parte* administration proceedings in the State of Georgia upon the ground

that decedent at the time of her death was a resident thereof. An administrator was appointed and took possession of certain personal property having a situs in the State of Georgia. The judgment of probate was affirmed by the Alabama Supreme Court and the executor applied to the *ex parte* administrator in Georgia to turn over the assets of the estate in his hands which the Supreme Court of Georgia ordered be done, holding that the administrator appointed in Georgia was bound by the judgment of probate in Alabama, although not a party thereto.

The case of *Buchan* v. *Williamson* involved a state of facts totally different. A suit was instituted by the heirs to recover a parcel of land. There was no personal representative qualified to sue. An administrator was later appointed. Under the laws of Georgia, real estate is liable for the debts of the decedent (Section 113-901, Georgia Code Ann.). The administrator, thus representing both heirs and creditors, brought suit to recover the land. The Georgia Supreme Court held that the previous suit did not bind the creditors of the estate and, therefore, the administrator was not bound. All of the cases cited in the footnote, page 3 of the Administrtor's brief, are of the latter type; that is, they involve claims against the estate or proceedings to recover assets of the estate involving in both instances the rights of creditors in addition to the rights of heirs.

The discussion in *34 C. J. 1038-1039*, also cited, clearly draws the distinction between a judgment settling the succession and one involving a controversy in which creditors are interested.

At no time during the litigation have counsel for the Administrator cited any case which holds that a personal representative can challenge the succession where it has been settled in an *inter partes* proceeding, such as that leading to the Georgia judgment.

II.

Counsel for the Administrator challenge the statement that the New York Administrator was appointed in *ex parte* proceedings and seek to bind the other distributees, resident of Georgia, and the Executors by reason of notice having been served upon them in the State of their residence. This was the exact situation that existed in the case of *Baker* v. *Baker, Eccles & Co.*, 242 U. S. 394. This Court disposed of that contention in the following language:

> "But it is now too well settled to be open to further dispute that the 'full faith and credit' clause and the act of Congress passed pursuant to it do not entitle a judgment *in personam* to extra-territorial effect if it be made to appear that it was rendered without jurisdiction over the person sought to be bound" (page 401),

and on page 403:

> "And to assume that a party resident beyond the confines of a State is required to come within its borders and submit his personal controversy to its tribunals upon receiving notice of the suit at the place of his residence is a futile attempt to extend the authority and control of a State beyond its own territory."

Likewise this Court emphasized the distinction between a judgment *in rem* and a judgment *in personam* in so far as the succession was to be determined (page 400):

> "How is the fact of decedent's domicile to be judicially ascertained as a step in determining what law is to govern the distribution? Obviously, if fundamental principles of justice are to be observed, the ascertainment must be according to due process of law, that is, either by a proceeding *in rem* in a court having control of the estate, or by a proceeding *in personam* after service of process upon the parties to be affected by the judgment."

The cases cited in our main brief:

In re Fisher's Estate, 180 Atl. 673 (N. J.), and
In re Willett's Appeal, 50 Conn. 330,

are substantially similar to the case of *Thomas* v. *Morrisett*, *supra*, and the instant case. The cases of

Thormann v. *Frame*, 176 U. S. 350, and
Overby v. *Gordon*, 177 U. S. 214,

involve situations where the succession was being settled in a proceeding *inter partes*. An *ex parte* judgment of general administration was offered in evidence in each case and excluded. Certainly in view of that fact such a judgment could not challenge the title of the personal representatives as to personal property so settled in the proceeding *inter partes*.

III.

Counsel for the Administrator see no significance in the fact that the Supreme Court of Delaware first determined the question of domicile, and then proceeded to examine the effect of the Georgia judgment. Its significance is twofold: First, in the fact that the effect to be given the Georgia judgment in no way depends on the determination of the factional issue of domicile by the Delaware court. Second, in finding that the decedent was domiciled in New York at the time of her death the court consequently concluded that the administration in New York was general or domiciliary, thus ignoring the fact that the question of the state of domiciliary administration had already been conclusively determined as Georgia. It was thus assumed that the New York judgment had the same legal effect in determining the succession as the *inter partes* judgment of the Georgia court. This would have been correct had both judgments been *ex parte* as to the respective distributees thereunder.

Baker v. *Baker, Eccles & Co.*, *supra*.

But in view of the fact that the Georgia judgment was binding on all parties interested in the succession, this was a denial to that judgment of the "full faith and credit" to which it was entitled under the Constitution and laws of the United States.

Respectfully submitted,

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